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November 12, 2002

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Via Hand Delivers Via E-Mail (<u>MDortch@FCC.Gov</u>)

Marlene H. Dortch, Secretary Federal Communications Commission 445 12th Street, S.W., Room TWB-204 Washington, DC 20554

Re: In the Matter of Verizon Telephone Companies Tariff FCC Nos. 1, 11, 14 and 16 Transmittal No. 226. WC Docket No. 02-317.

Opposition to the Direct Case of Verizon Telephone Companies

Dear Ms Dortch:

Attached plcasc find an original and four (4) copies of the Opposition to the Direct Case of Verizon Telephone Companies of Allegiance Teleconi, Inc., Broadview Networks, Inc., Cable & Wireless, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communications, Inc., to be filed in the above-captioned docket. An electronic copy has also been provided to the above email address. A copy of the attached document was provided today, November 12, 2002, via electronic mail, to Julie Saulnier, of the Wireline Competition Bureau.

If you have any questions regarding this filing, please do not hesitate to contact me at (202) 955-9766.

Respectfully submitted,

Ciu W Emmott

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Before the

Federal Communications Commission Washington, D.C. 20054

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In the Matter of)	
)	
The Verizon Telephone Companies)	WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14 and 16)	
Transmittal No. 226)	

OPPOSITION TO DIRECT CASE

ALLEGIANCE TELECOM, INC.,
BROADVIEW NETWORKS, INC.,
CABLE & WIRELESS,
KMC TELECOM HOLDINGS CORP.,
TALK AMERICA INC.,
XO COMMUNICATIONS, INC.

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Date: Novcinber 12, 2002

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Before the Federal Communications Commission Washington, D.C. 20054

In the Matter of)	
)	
The Verizon Telephone Companies)	WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14 and 16)	
Transmittal No. 226)	

OPPOSITION TO DIRECT CASE

Allegiance Telecom, Inc., Broadview Networks, Inc., Cable & Wireless, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communications, Inc. (hereinafter the "Joint Commenters"), by their attorneys, hereby oppose the Direct Case of the Vcrizon Telephone Companies ("Verizon") submitted to the Commission on October 29, 2002 ("Direct Cuse"), pursuant to the Commission's Order released October 7, 2002,' in connection with Verizon's Transmittal No. 226.² The Joint Commenters respectfully request that the Commission deny Verizon's request to modify its Tariff FCC Nos. 1, 11, 14 and 16 as proposed in Transmittal No. 226.

As a matter of administrative economy, the Joint Commenters request that the Commission incorporate into the record the Petition to Reject or, Alternatively, to Suspend and Investigate, filed with the Commission on August 1, 2002, attached hereto as *Exhibit A*.³ In addition, the Joint Commenters request that the *ex parte* comments

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The Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16, Transmittal Nu. 226. Order, WC Docket No. 02-317, DA 02-2522 (rel. Oct. 7, 2002) ("Designation Order").

On August 22, 2002, the Commission suspended Verizon's proposed tariff revisions for a five (5) month investigation period. *Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14 and 16 Transmittal No. 226,*, Order, DA 02-2055, rel **Aug.** 22. 2002 ("*Verizon Suspension Order"*).

Petition to Reject or. Alternatively, to Suspend and Investigate of ALTS, Broadview Networks, Inc., CompTel, KMC Telecom Holdings, Inc., Talk America Inc., and XO Communications, Inc. (filed Aug. 1, 2002) ("August 1, 2002 Petition to Reject").

filed in **WC** Docket No. 02-202,⁴ which was opened to address Verizon's "Petition for Emergency Declaratory and Other Relief," also be incorporated into this docket. Those comments are attached as *Exhibit B*. Finally, the Joint Commenters request that the "Opposition to Direct Case" filed with the Commission on October 24, 2002⁶ in response to the Direct Case filed by BellSouth Telecommunications, Inc.⁷ regarding BellSouth's tariff revisions filed under Transmittal No. 657, attached hereto as *Exhibit C*, be incorporated into the record of the above-captioned docket.

Verizon's tariff filing must be rejected because it imposes enormous and anticompetitive burdens on the competitive telecommunications industry to address a "problem" which Verizon's own numbers show does not exist. Verizon claims that its total interstate uncollectibles from carriers in 2001 was a *mere \$39 million*,' and this amount, by Verizon's own admission, includes uncollectibles for unbundled network elements ("UNEs") and other services, not just interstate exchange access services under

Letter io Marlene II. Dortch, ex parte written comments of Broadview Networks, Inc., Grande Communications Networks, Inc., Ionex Telecommunications, Inc., ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc., NewSouth Communications Corp., NuVox, Inc., NuVox Communicationis, Inc., Sage Telecom, Inc., Talk America, Inc., and XO Communications, Inc., filed in WC Docket No. 02-202 on August 23, 2002 ("August 23, 2002 Ex Parte").

Verizon Telephone Companies Petition Jot Emergency Declaratory and Other Relief, Public Notice, **DA** 02-1859, WC Docket No. 02-202 (July 31, 2002).

Opposition to Direct Case of Allegiance Telecom, Inc., Cable & Wireless, ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc., NewSouth Communications Corp., NuVox Communications, Inc., Talk America Inc., and XO Communications, Inc. (filed Oct. 24, 2002) ("BellSouth Opposition").

BellSouth Telecommunications, Inc. Tariff FCC No. 1, Transmittal No. 657, WC Docket No. 02-304, Direct Case (filed Oct. 10, 2002).

See Direct Case at 13-14 (Specifically, in 2001, Verizon claimed that its total uncollectibles for 2001 were \$110.3 million for Verizon-East and \$18.96 million for Verizon-West, while carrier uncollectibles had grown to roughly 30% of the total uncollectibles for the company or approximately \$33 million for Verizon-East and approximately \$5.7 million for Verizon-West).

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the tariffs it here seeks to revise." At the same time, Verizon earned more than \$4.3 billion on interstate Special Access services in 2001, and it achieved a nearly 22% rate

return for those services in 2001." Verizon's 2001 interstate exchange access

earnings increase significantly when interstate Switched Access services are taken into

account. Simply put, Verizon's tariff filing docs not pass the "laugh" test - it has failed

abysmally to show that it faces any significant problem with uncollectibles under its

interstatc exchange access tariffs, or that its current deposit provisions do not provide

adequate protection against unreasonable exposure to bad debt losses.

I. <u>INTRODUCTION AND SUMMARY</u>

1. Through its proposed tariff revisions, Verizon is seeking to expand

dramatically the scope of its security deposit requirements as well as its ability to refuse

or discontinue service to competing carriers. On August 22, 2002, the Commission

suspended the proposed tariff revisions for a period of five months and commenced this

investigation into Verizon's proposed tariff revisions.

2. Among other things, the proposed revisions would permit Verizon to

impose security deposit requirements on existing interstate access customers who have a

history of timely paying their access bills based solely on overbroad and arbitrary

Direct Case at A-I1 (acknowledging that it does not account for uncollectibles by service type)

See Declaration of Stephen Friedlander, In the Matter of AT&T Petitionfor Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM No. 10593, Petition of AT&T (filed Oct. 15, 2002) (Friedlander Declaration, AT&T Petition), ¶¶ 3-7 (citing to the 1996-2001 ARMIS 4301, Table I. Costs and Revenue Table, Special Access,

Column (s), Average New Investment, Row 1910 and Net Return, Row 1915).

Verizon earned approximately \$2.3 billion in Switched Access Revenues for the year 2001. See ARMIS data 43-04: Table 1. Separations and Access Table, (totaling the Network Access Service Revenue for Switched Access for all Verizon entities for 2001) available at http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms/output.hts.

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standards established and administered by Verizon. As the Commission properly noted

in its Designation Order, "[t]he proposed revisions to the security deposit terms

significantly alter the balance between Verizon and its intrastate access customers with

respect to the risks of nonpayment of interstate access bills" that has remained in place

for roughly the last 20 years."

3. If permitted lo be implemented, these tariff revisions would result in the

shifting of many tens of millions of dollars of scarce working capital from Verizon's

carrier customers to their direct competitor, Verizon. Verizon does not dispute that the

amounts it could collect from its access customers under these tariff revisions would

exceed, probably by many tens of millions of dollars, the loss from uncollectibles that

Verizon experienced under these tariffs in 2001

4. Furthermore, the proposed tariff revisions would give Verizon virtually

unfettered discretion to refuse to provide service, or to discontinue service, with almost

no advance notice to its carrier-customers and virtually no time for its carrier-customers

to resolve payment issues, find alternative suppliers (in the limited situations where any

exist), or notify end-user customers.

5. Verizon claims that these changes are necessary to "ensure that healthy

carriers are not unfairly burdened by the plight of financially distressed carriers" and to

protect it "during the industry downturn" that has resulted in the bankruptcy of

WorldCom and other carriers. However, Veriaon has not demonstrated that its current

12 Designation Order ¶ 11

13 Direct Case at I

Id. at 2.

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tariff provisions provide it with insufficient protection, or even that it has fully utilized

the current tariff provisions to minimize its exposure to bad debt losses. Nowhere does

Verizon offer any concrete data showing that the current provisions - which permit

Verizon to impose security deposits on existing customers who do not have a timely

payment history - do not provide adequate protection against significant losses in most

cases. With its proposed tariff revisions, Verizon is seeking to use the frenzy surrounding

the WorldCom bankruptcy proceeding, which may largely be attributable to fraud and

hence is not characteristic of the industry as a whole, as a pretext for insulating itself

from all business risk and for shifting that risk squarely onto its direct competitors at a

time when many of them simply cannot bear the burden.

6. The capital transfer contemplated by Verizon's proposed tariff revisions

(which surely will total in the many tens of niillions of dollars) is simply not accounted

for in the business plans of its remaining local competitors, and the extent to which such

a capital shift could be supported by individual carriers at any point in the near future is

highly doubtful. There simply is no compelling policy reason why the Commission

should allow Verizon to use its FCC tariffs as a weapon to drain scarce capital from its

competitors while insulating itself from virtually any business risk resulting from the sale

of enormously profitable interstate access services.

7. Verizon's Direct Case is, in large part, unresponsive to the issues set out

for investigation by the Commission in its *Designation Order*. The Joint Commenters

question whether Verizon has justified treating its data as "proprietary" given that both

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BellSouth and SBC¹⁵ filed Direct Cases in similar circumstances without relying upon any proprietary data. In particular, the Joint Commenters dispute Verizon's allegation that its response embodies "sensitive information concerning Verizon's billing and collection practices, which is kept confidential within the company and **is** not normally released due to concerns that it could harm Verizon's competitive position.""

8. Verizon has provided no substantial justification for the material changes it asks the Commission to approve. General references to market instability and the bankruptcy of one carrier cannot suffice to justify adopting a tariff provision that would require nearly every access customer to pay burdensome security deposits to its principal rival. In particular, the Joint Commenters demonstrate below that (I) Verizon has failed to provide a legitimate basis for expanding the scope of its ability to demand a security deposit from existing interstate access customers in order to shift the normal business risks associated with the sale of its highly profitable access services onto its direct competitors;" (2) Verizon has failed to demonstrate the reasonableness of reducing the notice requirement from thirty days to seven days before service may be terminated, or

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Ameritech Operating Companies, Tariff FCC No. 2. Transmittal No. 1312; Nevada Bell Telephone Companies Tariff FCC No. 1, Transmittal No. 20; Pacific Bell Telephone Coinpany. FCC Tariff No. 1. Transmittal No. 77; Southern New England Telephone Companies, Tariff FCC No. 39. Transmittal No. 772, Southwestern Bell Telephone Company, FCC Tariff No. 73, Transmittal No. 2906, DA No. 02-2577, WC Docket No. 02-319; Direct Case (filed October 31, 2002).

Letter to Marlene H. Dortch from Ann H. Rakestraw, requesting confidential treatment of the data marked "proprietary" in the Direct Case of Verizon and a protective order, dated Oct. 29, 2002 ("Protective Order Request")

To the extent risk associated with the WorldCom bankruptcy could be characterized as extraordinary, it is inappropriate for Verizon's competitors to bear the burden, as they did not share in the massive profits Verizon has reaped and continues to reap from WorldCom nor are they receiving the type of post-petition payments that Verizon is receiving from WorldCom on an ongoing basis. See "WorldCom Extends Verizon Billing Pact," TR Daily, Sept. 4, 2002, ("WorldCom will pay to Verizon \$34.5 million that it owed the company prior to entering bankruptcy proceedings in July").

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reducing the notice period to ten days for a security deposit; (3) Verizon has failed to

justify the reasonableness of its security deposit refund provision; and (4) Verizon has not

shown that the proposed tariff changes are not material changes to Verizon's term

contracts, or that such revisions satisfy the substantial cause test

9. As stated in the August 1, 2002 Petition io Reject, and reiterated in both

the August 23, 2002 Ex Parte and the BellSouth Opposition, permitting these revisions to

take effect as filed by Verizon will cause significant and irreparable harm to its remaining

direct competitors. As noted by Kim N. Wallace, Managing Director, Lehman Bros.,

Inc., at Chairman Powell's recent en banc hearing, "[t]he danger of attempting to adapt

microeconomic policy to current conditions is that such policies always lag real-world

events and invite high risks of unintended consequences.""

II. ISSUES DESIGNATED FOR INVESTIGATION

A. Basis for Requiring a Deposit or Advance Payments from a Customer

10. As raised by the Joint Commenters in the August 1, 2002 Petition to

Reject, ¹⁹ and acknowledged by the Commission in the Designation Order," the proposed

tariff revisions will enable Verizon to stifle local competition by requiring cash-strapped

competitors to pay Vcrizon many tens of millions of dollars in scarce (if not

irreplaceable) working capital, The payments Verizon will be able to extract from its

competitors will far exceed any bad debt losses that Verizon has actually experienced

Telecommunications Reports, Vol. 68, No. 38, Oct. 15, 2002.

See e.g., August 1, 2002 Petition to Reject at 3, 5 (demonstrating that Verizon's proposed tariff revisions are nothing more than an anticompetitive attempt by Verizon to impose new and arduous

requirements on its direct competitors).

20 Designation Order¶ II

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under its interstate access tariffs. Further, Verizon's proposed tariff revisions will permit

it to discriminate unreasonably among its interstate access customers, whether they are

interexchange carriers, competitive LECs, or business end-user subscribers. Verizon will

be able to selectively punish a successful competitor by maximizing its security deposits,

while rewarding end user subscribers by reducing or removing any such requirements.

These tariff revisions are inherently anticompetitive, and the negative impact of such

provisions would only be magnified in the current industry environment.

11. Verizon asserts that the proposed revisions are necessary to avoid having

it "bear 100% of the costs that inevitably occur when [its] customers fail to pay for

services"²¹ Yet Verizon has offered no concrete evidence that the current tariff

provisions offer an insufficient level of protection, or that it has sought to employ those

provisions to their full effect to minimize its exposure. Certainly, Verizon has offered no

reason for permitting it to insist that its entire customer base should be forced to act as

guarantors of the payments that Verizon may be owed by individual carriers.

12. In its *Designation Order*, the Commission wisely acknowledges that, with

respect to the risks of nonpayment, if permitted to implement the proposed tariff

revisions, Veriaon will dramatically alter the balance between it and its interstate

customers that was struck approximately 20 years ago. 22 Verizon offers no evidence that

this balance has become unfairly skewed by recent developments. Verizon claims that

roughly 30% of its interstate uncollectibles in 2001 – or approximately \$39 million – can

Direct Case at 2.

22 Designation Order ¶ 11

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he attributed to its carrier-customers.²³ Surprisingly, Verizon admits that it has no idea what portion of that \$39 million actually relates to interstate access services.²⁴ Some portion, perhaps most or even all, relates to the sale of UNEs or other services pursuant to interconnection agreements. Nor does Verizon have any data on the extent to which uncollectibles under its interstate access tariffs have been increasing or decreasing in recent years. Overall, Verizon generated profits of approximately \$11 billion in 2001, a 30.4% increase over the previous year.²⁵ Further, Verizon's ARMIS reports show that it earned more than \$4.3 billion in revenues from its interstate Special Access services in 2001, and that its rate of return for those services was approximately 22%.²⁶ These figures conclusively prove that there is no "problem" with uncollectibles under Verizon's interstate access tariffs today. At a minimum, Verizon has failed to meet its burden to show that these tariff revisions are necessary to address a serious "problem" that affects Verizon's financial health

13. Clearly, the "utter crisis" in the telecommunications industry has not affected the revenues or profits that Verizon earns under the tariffs that it now seeks to revise. In light of these data, it is apparent that there is no legitimate basis, other than

See Direct Case at 13-14 (Specifically, in 2001, Verizon claimed that its total uncollectibles for 2001 were \$110.3 million for Veriron-East and \$18.96 million for Verizon-West, while carrier uncollectibles had grown to roughly 30% of the total uncollectibles for the company or approximately \$33 million for Veriron-East and approximately \$5.7 million for Verizon-West).

²⁴ *Id.* at A-9. n.6

Venzon Company Profile for 2001, **IIS** Business Reporter, http://www.activemedia-guide.com/profile-verizon.htm.

See Friedlander Declaration, AT&T Petition, ¶¶ 3-7 (citing to the 1996-2001 ARMIS 4301, Table I. Costs and Revenue Table, Special Access, Column (s), Average New Investment, Row 1910 and Net Return, Row 1915); see also ARMIS data 43-04: Table I. Separations and Access Table, (Verizon eanied approximately \$2.3 billion in Switched Access Revenues for the year 2001) available at http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms/output.hts.

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Verizon's greed and anticompetitive designs, for the Commission to change the

"balance" between Verizon and its customers' interests that is embodied in the current

tariff provisions.²⁷

14. Although Verizon seems to enjoy repeating the quotation that the industry

is in "utter crisis," it offers no objective basis to believe that the volatility experienced

during the past several years will continue on a permanent basis. Indeed, it would seem

almost impossible for that to be the case. The rash of bankruptcies that plagued the

industry has eliminated the weakest competitors, and there is no legitimate basis to

believe that the remaining competitors present the same level of had debt risk that

Verizon may have faced in the past two years. The irony of Verizon's tariff revisions is

that they have been filed just as the alleged "problem" they are supposed to redress has

begun to dissipate.

15. The Joint Commenters believe it is a critical flaw in Verizon's Direct Case

that, as noted above, it presents no data on the level of uncollectibles attributable to its

interstate access tariffs. Verizon asserts that it "does not account for its uncollectibles by

type of service, therefore it does not have available just the 'access' service portion of

uncollectibles associated with these tariffs."" From this lack of information and effort, it

is evident that Verizon does not even know how big the alleged problem that it is seeking

Commission assistance to guard against actually is, or whether the existing tariff

provisions, if used, could not provide sufficient protections. Without such a showing, the

Direct Case at A-8.

²⁸ *Id.* at A-11

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Commission should not be lured into providing Verizon with carte blanche permission to

implement proposed tariff revisions that will do nothing more than shore up Verizon's

already near monopoly status and market dominance over its few remaining competitors.

16. When asked by the Commission to describe its billing and collection

processes to help the Commission's understanding of the increase in the level of

uncollectibles,²⁰ Verizon chose instead to shift the blame onto the "growing number of

customers that are going out of business and filing for bankruptcy."" When specific

questions about the length of time to render bills was asked by the Commission,"

Verizon admits that it can take up to ten days after the bill date for a paper bill to be

issued in the Verizon-East states and eight days in Verizon-West.³² Verizon offers no

justification for these delays. Nor does it forthrightly acknowledge that its bills are

typically riddled with errors and that the review of these bills has become a complex time

and resource consuming process (in fact, it has become an industry). If Verizon is

concerned about timely receipt of payments from its customers, Verizon should strive to

issue bills faster and more accurately, thus providing its customers with more time to

review, make payments, and if necessary, dispute charges contained therein.

17. In addition to its current security deposit requirements, Verizon has other

protections to ameliorate the risks associated with delayed payments from customers

when Verizon bills its services in advanced. These protections come in the form of late

Designation Order ¶ 13.

Direct Case at A-15.

Designation Order ¶ 13.

Direct Case at A-17.

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payment charges on delinquent amounts owed to Verizon, assessed at either the rate of

the highest interest rate (in decimal value) which may be levied by law for commercial

transactions. or 0.00024657 per day." Contrary to Venzon's assertion, interest on late

payments does reduce Verizon's "risk or exposure" associated with amounts past due.³⁴

18. In the Designation Order, the Commission inquired about possible

changes in customer behavior and requested that Verizon provide it with the percentage

of carrier bills disputed, billed revenue disputed and disputed amounts adjusted.³⁵

Verizon responded by noting that "one of the largest factors that has contributed to the

growth of outstanding receivables is the recent, growing number of customers that are

going out of business."" Yet Verizon fails to justify the need for the revised tariff

provisions based on any change in customer behavior in regards to disputed amounts.

Furthermore, because under the terms of the tariff, customers are permitted to dispute

charges on their bills, it is not unusual for a carrier under Verizon's interstate access tariff

to dispute ten-to-twenty percent or more of the charges each month. In most cases, the

charges in dispute are found to be in the challenging carrier's favor (if the camer-

customer can actually get Verizon to devote the resources to the dispute). The frequency

and success ratio of billing disputes shows that it is unreasonable for Verizon to seek to

implement its security deposit and service discontinuance practices.

See Section 2.4.1 (B)(3)(b) (I) and (II), Verizon Tariff FCC No. I (eff. Apr. 28, 2001); see also Section 2.4.1 (B)(3)(b)(I) and (II), Verizon Tariff FCC No. II (eff. Apr. 28, 2001) (modifying the amount per day to 0.0005).

Direct Case at A-20.

Designation Order ¶ 13.

Direct Case at A-15.

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19. The Commission also inquired into Verizon's hilling of services in

advance or in arrears.³⁷ Verizon's responses provide evidence that Verizon already has in

place adequate protections to guard against the risk of nonpayment. According to its

Direct Cuse. "[c]harges associated with service usage (switched access) and the Federal

Government arc billed in arrears. Charges for all other services generally are billed in

advance."38 Joint Commenters assert that there is inherently less risk associated with

billing in advance than there is associated with billing in arrears. Certainly, there is no

legitimate basis for imposing the same sire of deposit requirement without regard to

whether the service is billed in arrears or in advance. Although Verizon notes that bills

sent in advance are not due until 30 days later, which may be just after the service has

been provided, Vcrizon cannot deny that its exposure to uncollectibles is significantly

reduced when it bills in advance rather than in arrears. The fact that an increasing portion

of all ILECs' services are billed in advance shows that the original "balance" between

customers and the ILECs struck 20 years ago continues to be appropriate today.

20. Nor should the Commission permit Verizon to gloss over the amounts it

often owes to carriers (including reciprocal compensation). Even if Verizon is correct

that those amounts are less than the amounts it is owed under its interstate access tariffs,

the fact remains that the level of Verizon's exposure to bad debt losses is reduced to a

significant extent by these reciprocal payment obligations.

Designation Order ¶ 14.

Direct Case at A-19.

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21. When requested to indicate the amounts of unpaid bills attributed to carriers filing for bankruptcy," Verizon states that "[t]he vast majority of bankruptcies are still open and it could take years to recover any cure or settlement money." By its own admission, Verizon is unable to provide an actual figure. Verizon's example, that of WorldCom owing it approximately \$450 million in the months prior to seeking bankruptcy protection, fails to acknowledge that it has been able to recover at least some portion of pre-petition debts from WorldCom. The Joint Commenters believe that this has been the case in other bankruptcies as well. Furthermore, Joint Commenters contend that Verizon has been able to secure some form of payments from a carrier-customer who ultimately went out of business while in bankruptcy. Hence, Verizon's failure to provide any concrete data on the amount of unpaid invoices under these tariffs due to bankruptcies removes any possible justification for the instant tariff revisions.

22. While Verizon contends that "there is nothing in the proposals that attempt to override the [Bankruptcy] Code," Verizon has publicly acknowledged that "[i]t is likely that the protections instituted by the court will be sufficient to protect Verizon's interests as long as WorldCom's financial position does not materially worsen." If Verizon can tell the world that it does not need new security deposits and payment

³⁹ Designation Order ¶ 15

⁴⁰ Direct Case at A-23

[&]quot;WorldCom Extends Veriron Billing Pact," TR Daily, Sept. 4, 2002 ("WorldCom will pay to Verizon \$34.5 million that it owed the company prior to entering bankruptcy proceedings in July.").

Direct Case at A-23

See "Judge Compromises on LEC's Request for Tougher WorldCom Payment Plan." TR Doily, August 15, 2002.

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structures to cover the amounls owed to it by WorldCom, it certainly does not now need

new and additional means of imposing such requirements on its other competitors whose

levels of service purchased from Verizon nowhere match the amounts purchased by

WorldCom.

23. The Joint Commenters agree that, as indicated by the Commission, the

provisions included in Verizon's proposed tariff revisions "give Verizon considerable

discretion to enforce [the tariff] provisions."44 Veriaon itself concedes that it has

discretion in deciding whether and upon which carriers to impose a security deposit

requirement. 45 The so-called "objective" criteria that Verizon points to allows Verizon

vast latitude in weighing one criterion more heavily than another and, as Verizon so often

points out, will only by implemented on a "may" basis, 46 providing Verizon with

unfettered discretion to determine when and on whom it wishes to impose its

requirements and demand a security deposit or advance payments. Venzon's assertion

that it has no "incentive" to be discriminatory falls of its own weight. ⁴⁷ As the dominant

local carrier, Verizon has both the incentive and the ability to selectively impose

burdensome deposit requirements in order to punish successful competitors and

undermine local competition. As evidenced by the Bell Companies' willingness to pay

many tens of millions of dollars in fines in order to thwart local competitors, the prospect

44 Designation Order ¶ 19

Direct Case at 24-21 (claiming that it should be reasonable for Verizon to have the same discretion it has regarding discontinuance of service when it undertakes to establish a form of adequate assurance in the form of security deposits and prepayments).

⁴⁶ /d at A-4, A-5.

⁴⁷ Id.

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of paying interest at 18.25%⁴⁸ will not deter Verizon from taking actions that entrench its monopoly position by imposing monetary burdens on local competitors.

- 24. The proposed "objective" criteria for evaluating a customer's creditworthiness are overbroad and arbitrary. The creditworthiness criteria are designed to ensure that all of Verixon's competitors are subject to a requirement to pay millions of dollars in deposits, and continue to be forced to subsidize Verizon's shareholders, as well as the servicing of Verizon's own massive debt levels." Verizon has failed to set forth any plausible rationale for imposing them on any or all cam'er customers.
- 25. Verizon's claim that its alternatives to the two months security deposits are beneficial to its cash strapped customers by providing it with "flexibility in dealing with customers who wish to provide adequate assurance of payment other than a cash security deposit," ⁵⁰ Ignores that these alternatives (a letter of credit or one month advance payment) may be just as difficult to comply with as a security deposit. Letters of credit can be difficult to obtain and are expensive to maintain. Advance payments, in a time where working capital is scarce and the availability of additional investment capital is nearly impossible to secure, are burdensome to comply with at any time. Further, advance payments work effectively only when the ILEC has a reliable and efficient

⁴⁸ Id

See "Verizon Reins in Forecast; Profits Lost Among Charges" TR Daily, July 31, 2002 (citing to Verizon's 2Q earnings report indicating a 2.1 billion net loss for the second quarter of 2002 as a result of 4.2 billion in charges, \$3.2 billion of which was tied to asset write-downs related to its investments in telecom conipanies including Cenuity, Inc., Telus Corp., and Cable & Wireless plc, and \$475 million was severance-related); see also See Jane Black, Is Verizon a Champ or a Pretender?, Business Week Online, June 10, 2002 at 2 ("Declining margins and profits are raising questions about Verizon's \$60 billion debt load. On May 31, Moody's announced it was reviewing the Baby Bell's long-term debt ratings for a possible downgrade").

Direct Case at A-26.

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billing system, which Verizon does not possess today. In sum, these alternatives do not

demonstrate Verizon's desire to work with its customers. Rather, they demonstrate that

Verizon is seeking to do nothing more than weaken its competition by demanding

unreasonable and unjustified modifications to its tariff provisions.

26. The Commission requested that Verizon "explain how each of these

factors [3, 4, 5, and 6 used by Verizon to determine a customer's creditworthiness] is a

valid predicator of whether the carrier will pay its interstate access bill."51 Verizon has

not demonstrated how any of the factors it proposes to use to determine whether a

security deposit will be required are valid predictors of the likelihood of a customer

paying its access bill. As stated in the August 1, 2002 Petition to Reject, 52 the criteria

selected to determine creditworthiness provide Verizon with too much discretion in

determining whether or not to require its customers, most of whom are direct competitors

with Verizon in the local and long distance market, to provide a security deposit

Verizon does not provide sufficient justification to explain why it needs to

impose a deposit in an amount based on estimated future billings when "the customer has

fallen into arrears in its account balance in any two (2) months out of any consecutive

twelve (12) month period." **As** pointed out in its August 1, 2002 Petition to Reject, there

is no minimum threshold time or amount requirement for the amount in arrearage. As the

tariff revision is currently drafted, Verizon could demand a deposit of millions of dollars

on a carrier that was in arrearage less than S50 in February and then again for a few more

Designation Order ¶ 21.

August 1, 2002 Petition to Reject at 2

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dollars in October. As written, there is little if any nexus between a payment pattern that

would trigger a deposit and a payment pattern that may indicate an extraordinary risk of

nonpayment. Certainly, Verizon should not be permitted to consider disputed amounts to

be in arrears, either for determining when to impose a security deposit or deciding how

much of a deposit to require. Indeed, permitting Verizon to consider disputed amounts to

be in arrears would give it an incentive to avoid correcting, and indeed to make worse, its

current billing systems, which arc systematically inaccurate and unreliable. Because

carrier customers routinely dispute significant percentages of their billings and typically

experience a high success rate in doing so, Verizon should not be permitted to regard

such amounts as in arrears for deposit purposes.

28. In addition, setting the threshold that triggers the imposition of a deposit at

\$250,000 owed for more than 30 days is unreasonable. Carrier customers routinely pay

many millions of dollars per month for services provided by carriers such as Verizon. To

set the threshold so low would virtually assure Verizon the ability to impose million

dollar deposits on almost all carrier customers.

29. In addressing criteria 3 and 4,53 Verizon alleges that "if a customer or its

parent satisfies one of the criteria above [with regards to being in bankruptcy or

receivership, or admits its inability to pay debts as they become due], it is stating it is

unable to pay all of its future bills."54 This conclusion is incorrect. As stated above,

Designation Order ¶ 21 (criteria 3: the customer or its parent informs Verizon or publicly states that it is unable to pay its debts as such debts become due. Criteria 4: the customer or its parent has commenced voluntary or involuntary receivership or bankruptcy).

Direct Case at 8.

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Verizon has been able to secure payments from carriers such as WorldCom,⁵⁵ who are in bankruptcy, and other carriers such as XO Communications, who are getting ready to

30. Verizon's discussion of criteria 5 and 6⁵⁶ fails to demonstrate any link between debt securities ratings and the ability for the carrier customer to meet its obligations to Verizon. **As** currently written, these criteria would apply to virtually all competitive carriers, regardless of their payment history with Verizon. In fact, the Joint Commenters believe that based on this requirement alone, Verizon should be imposing security deposits on its own affiliates," although Verizon presently does not appear to be doing so. ⁵⁸

31. In the *Designation Order*, the Commission inquired about payment characteristics of defaulting interstate access customers during the year prior to the ninety (90) days in default and any other payment patterns that may be identified that would allow Verizon to trigger the security deposit requirements already in place." Venzon stated that it "is not aware of any 'typical' pattern for customers prior to the time an account is ninety days or more overdue" and instead, provided only a cryptic assertion

cmerge from bankruptcy

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[&]quot;WorldCom Extends Veriron Billing Pact," TR Daily, Sept. 4, 2002.

Designation Order ¶21 (criteria 5: the customer's or its parent's senior debt securities are below investment grade as defined by the Securities and Exchange Commission. Criteria 6: the customer's or its pricent's senior debt securities are rated the lowest investment grade rating category by a nationally recognized statistical rating organization and are pot on review by the rating organization for a possible downgrade).

⁵⁷ See "Moody's Cuts BellSouth Outlook; Eyes Other Bell Debt Ratings," TR Daily, August 8, 2002.

Direct Case at A-30.

Designation Order ¶ 22.

Direct Case at A-30.

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that "[w]hile a customer's past payment history is still a good predictor of future

payment, it cannot be the only one," without going into any further explanation other to

worry about not receiving "adequate assurances" for payment. Here, the Commission

essentially has asked Verizon to substantiate its claim that the existing deposit provisions

have been used and have failed to protect – and, rather than substantiate its claim,

Verizon simply asks the Commission to take its word in place of fact. Obviously, more

compelling evidence should be required to upend a regime that has worked well for

approximately 20 years

В. **Notice for Deposit and Shortened Termination Period**

32. In response to the Commission's inquiry into the need to shorten the

notice period from 30 days to seven days prior to termination of service," Verizon stated

that the change is necessary so that it "can limit its prospective exposure to customers

who have not paid for services already received."" This justification is not reasonable,

particularly since the reduction in time, if permitted to be implemented, threatens

substantial harms to customers by permitting Verizon to, of its own volition, discontinue

service to carrier customers who, in turn, ate providing service directly to the public. To

permit Verizon to reduce the minimum notice period prior to termination would cause

tremendous harm both to its competitors and to consumers whose service could easily be

disrupted. In addition, the proposed seven day time period that Verizon alleges is

necessary to protect it from the risks of doing business in the telecommunications sector

61 ld. at A-31.

Designation Order ¶ 27.

Direct Case at B-1, B-2.

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would not allow for a reasonable amount of time in which the camer customer can cure

the defects or reconcile disputes.

33. The Joint Commenters are not comforted by the fact that "Verizon almost

never sends notice of terminationto a customer on the first day that it is entitled to

send such a notice."" There is nothing in the proposed tariff revisions that would prevent

Verizon from sending the notice on the first day available, despite Verizon's assertion

that it chooses not to so. The Joint Commenters contend that without a substantial

showing by Verizon of a need for the revisions, the current tariff provisions available to

Verizon should be enough.

34. Furthermore, Verizon's claim that there already is a "long lag time"

between when services are rendered and the issuance of the notice of discontinuance does

not justify shortening the period before termination. If anything, Verizon's indication of

the amount of time involved from sending the bill (which, by Verizon's own figures,

takes an unnecessarily long time from the end of the billing cycle to rendering of the bill),

resolving disputes, and then Verizon issuing a termination notice, demonstrates that

shortening the time involved would serve no other purpose than to harm Verizon's direct

competitors, its interstate access customers.

C. Refund of Deposits

35. Recognizing the concerns of the Joint Commenters, the Commission

questioned the reasonableness of Verizon's policy on deposit refunds." In its Direct

⁶⁴ Id. at B-2.

Designation Order ¶ 30.

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Case, Verizon fails to demonstrate that its refund policy, as proposed in its tariff

revisions, is reasonable. In a time where working capital is scarce and the availability of

additional investment capital is nearly impossible for carriers to secure, it is reasonable

for Verizon's interstate access customers to want to govern their conduct in a manner that

will ensure that they will receive their security deposit back upon meeting a set threshold,

such as making timely payments for a twelve (12) month period. Otherwise, carrier

customers can never count on a refund of a security deposit amount and it becomes a

matter entirely entrusted to the unilateral discretion of a direct competitor, Verizon.

36. Further, if Verizon's main concern is to ensure it has "adequate

assurances" for payment of its services from its customers, payment alone should be

enough to permit a customer to obtain its security deposit. The additional requirement

that "the customer no longer satisfies any of the criteria for requiring a deposit or advance

payment, 66 is unnecessary. A customer could easily make all its payments, have no

outstanding amounts owed to Verizon, yet still be required to provide Verizon with a

security deposit of up to two (2) months payment in order to ensure Verizon continues to

provide it with service. To permit Verizon to do this is highly anticompetitive. Verizon

does not provide a reasonable justification as to why a customer must satisfy both,

particularly in light of the fact that its primary concern is receiving payments, nor does it

provide a correlation between its imposition of the security deposit and a customer

satisfying only one of the criteria, while, at the same time, maintaining a perfect payment

history.

Direct Case at C-3 (quoting Section 2.4.1(A)(4), Verizon FCC Tariff No. I)

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